

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JUDITH FESTA AND ALFRED FESTA,
Plaintiffs

v.

SIMON PROPERTY GROUP, LP
Defendant.

CIVIL ACTION NO: 2005-10667GAO

**DEFENDANT SIMON PROPERTY GROUP, LP'S OPPOSITION TO
PLAINTIFFS' MOTION TO ENLARGE TIME**

NOW COMES the Defendant, Simon Property Group LP, by and through its attorneys,
and submits the following Opposition to Plaintiffs' Motion to Enlarge Time:

I. INTRODUCTION:

This cause of action arises out of an alleged slip and fall accident by Plaintiff Judith Festa on November 26, 2004 in the parking lot at the Square One Mall, an enclosed shopping mall managed by the Defendant in Saugus, Massachusetts.

II. ARGUMENT:

Plaintiff has recently filed a Motion to Enlarge Time for the purpose of taking an additional discovery deposition in this case. Defendant Simon Property Group, LP opposes Plaintiff's Motion to Enlarge Time for the following reasons:

1. This case was entered in this Court on April 5, 2005.
2. Defendant filed its answer to Plaintiffs' complaint on May 3, 2005.

3. In connection with the Rule 16.1 Conference in this matter held on June 6, 2005, the parties submitted a proposed discovery plan, which was adopted by the Order of this Court on June 13, 2005, wherein discovery was to have been completed by December 31, 2005.
4. In Defendant's answers to interrogatories served to Plaintiffs on July 27, 2005, Defendant stated in answers to Plaintiffs' interrogatory numbers 8 and 9: "Unicco Service Company performed maintenance and housekeeping duties at the Square One Mall, including the mall parking lots, pursuant to contract, at the time in question."
5. In Defendant's response to Plaintiff's second request for the production of documents served to Plaintiff on October 24, 2005, Defendant produced a copy of the Service Agreement between Mayflower Square One LLC and Unicco Service Company, pertaining to Unicco's maintenance obligations at the Square One Mall.
6. On January 20, 2006, after the expiration of the discovery period for this case, Plaintiff noticed and subpoenaed Thomas Watson of Unicco Service Company to appear for deposition on February 22, 2006 and directed Mr. Watson to produce any and all documents of Unicco relating to its work in a section of the Square One Mall parking lot from October 12004 through June 2005.
7. Under the Court's Scheduling Order for this case, this matter is to go to ADR in March of 2006.
8. Under the Court's Scheduling Order for this case, this matter is set for a Pre-Trial Conference on April 3, 2006 and Trial on May 1, 2006.
9. Contrary to Plaintiffs' assertion that allowance of their motion will not affect any of the other deadlines, continued discovery in this matter into March of 2006 will hinder Defendant's

ability to effectively participate in ADR of this case in March of 2006, as per the Court's Scheduling Order.

10. For months prior to the expiration of the discovery deadline, Plaintiffs were in possession of Defendant's discovery responses which set forth the responsibilities of Unicco Service Company for maintenance of the parking lots at Square One Mall.

11. Plaintiffs now seek, without good reason, cause or explanation, to enlarge time to engage in additional discovery as this case approaches the dates for ADR, pre-trial and trial.

III. CONCLUSION:

WHEREFORE, for the reasons set forth above in this Opposition to Plaintiffs' Motion to Enlarge Time, the Defendant respectfully requests this Honorable Court enforce the existing discovery deadline; deny the Plaintiffs' Motion to Enlarge; and allow this case to proceed to a meaningful ADR in March 2006, as previously agreed by the parties and Ordered by the Court.

Respectfully submitted,

The Defendant,
Simon Property Group, LP

By its attorneys,
MORRISON MAHONEY LLP

/s/ Sean J. Milano

Sean J. Milano, BBO# 551996
250 Summer Street
Boston, MA 02210
617-439-7500

Certificate of Service

I certify that this document has been served upon all counsel of records in compliance with the F.R.C.P. this 16th day of February, 2006.

/s/ Sean J. Milano

Sean J. Milano